

Chesapeake Bay Preservation Act Work Program
December 3, 2009 Stakeholder Roundtable Comment Matrix
January 28, 2010

No.	ISSUE DESCRIPTION	STAFF COMMENTS & RECOMMENDATION	PLANNING COMMISSION COMMENTS
1	AGRICULTURE (Bill Baker, Al Van Huyck, Jim Christian)		
a)	Concern regarding the agricultural staffing resources needed to implement the Chesapeake Bay Preservation Act (CBPA), including staff at the Loudoun Soil and Water Conservation District and Extension.	Staff recognizes that current staffing levels in key Departments would have to be maintained, including the Soil and Water Conservation District, and Extension. Staff will advise the Board during the upcoming FY 2011 budget deliberations to address how any proposed cuts to Staff levels in affected departments (including, but not limited to, Building and Development, Planning, and Extension Services), as well as the Soil and Water Conservation District (SWCD), would impact the implementation and administration of the proposed Chesapeake Bay Preservation Ordinance (CBPO).	
b)	Concern regarding the effects of fencing livestock on access to water and shade.	Grazing and access to water is permitted within the buffer as long as the Buffer Area is managed to prevent concentrated flows of surface water from breaching the Buffer Area. Where fencing is required, alternative watering systems and additional sources of shade may need to be accommodated. Fencing and alternative watering systems are among the Best Management Practices (BMPs) that are eligible for funding under the Virginia Agricultural BMP Cost-Share program, which covers up to 75% of the cost of the BMP. The SWCD paid \$250,000 in cost-share to landowners to assist in the implementation of BMPs for the current fiscal year.	
c)	Request to amend the composition of the Chesapeake Bay Review Board to include a member with an agricultural background.	Staff amended the text in Section 1222.22.b of the CBPO to read: “The members shall represent diverse professions related to agriculture, land development, and the environment.”	
d)	Concern regarding the effect of the reduction of the erosion and sediment control threshold from 10,000 sf to 2,500 sf on agricultural structures.	Staff acknowledges this concern; however, the Virginia Erosion and Sediment Control Regulations and the Chesapeake Bay Preservation Area Designation and Management Regulations do not provide an erosion and sediment control exemption for agricultural structures.	
e)	Request to re-focus this effort for more public hearings and re-drafting of policies to ensure that Loudoun County receives equitable and achievable goals as the State and the Environmental Protection Agency (EPA) formulates State Watershed Plans required by the Chesapeake Bay Total Maximum Daily Load (TMDL).	EPA is currently working with the Bay states on the development of a TMDL for the Chesapeake Bay by December 2010. The TMDL is a regulatory tool of the Clean Water Act (Section 303d) and can be considered a “pollution diet” that will allocate loadings of nutrients (nitrogen and phosphorus) and sediment to all jurisdictions in the Bay watershed, including New York, Pennsylvania, West Virginia, Delaware, Maryland, Virginia, and the District of Columbia. The work program initiated by the Board of Supervisors on April 7, 2009 and the Intent to Amend approved by the Board on December 15, 2009 directs the implementation of portions of the Chesapeake Bay Preservation Area Designation and Management Regulations, and other criteria, promulgated pursuant to the Chesapeake Bay Preservation Act for the protection of local water quality. However, implementation of the regulations will aid in achieving the nutrient and sediment load reductions required by the TMDL.	
f)	Recommendation that a public education effort be developed to provide information on all of the land conservation	Staff supports distribution of information on related conservation programs that will support implementation of the regulations via information brochures, fact sheets, and the County	

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	programs available from the State, SWCD, and Extension.	website and looks forward to working collaboratively with the agricultural stakeholders and their staff liaisons in the development of these materials.	
g)	The Agricultural and Forestry District Advisory Committee (ADAC) would like to work cooperatively with staff to revise the Land Management Plan required to enroll in an Agricultural District to ensure compliance with the regulations as a prerequisite for acceptance.	Staff appreciates the support and assistance of ADAC in implementing the proposed regulations.	
2	URBAN (Bill Fissel, Linda Erbs, Mark Trostle, Edna Cross, Joe Paciulli)		
a)	Review definitions in the Revised General Plan, the Countywide Transportation Plan, the Zoning Ordinance, and the Chesapeake Bay Preservation Ordinance (CBPO) and provide consistency.	Staff has reviewed the definitions and maintained consistency in the proposed amendments where appropriate. There is some variation between the Zoning Ordinance and the Chesapeake Bay Preservation Ordinance due to the fact that the definitions outlined in the CBPO are specific to that section of the County Codified Ordinances. This is consistent with other chapters in the Codified Ordinances, which provide definitions specific to each Chapter.	
b)	Additions to commercial structures within the Resource Protection Area (RPA) should be addressed in the proposed amendments.	Section 1222.20 of the CBPO addresses administrative waivers for minor additions, which would apply to commercial structures.	
c)	Include a provision providing density credit for areas within the RPA and the floodplain consistent with the Revised General Plan.	Section 1222.07.d of the CBPO permits density credit for the RPA and RMA. Section 4-1511 of the Zoning Ordinance is proposed for amendment to permit density credit for the floodplain.	
d)	The Revised General Plan policy allowing lakes and ponds to be located in the RPA and/or floodplain is not addressed in the Zoning Ordinance.	While the Revised General Plan (RGP) supports density credit in the RPA, RMA, and the floodplain, it does not support the location of lakes and ponds in the floodplain. Draft RGP policies state that “uses within river and stream corridors will be governed by the County-adopted provisions of the Chesapeake Bay Preservation Act; a Floodplain Overlay District; a Scenic Creek Valley Buffer; Steep Slopes Performance Standards; and federal and state regulations to the Clean Water Act.” While flood control or stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed are permitted within the RPA by the CBPO; these facilities are not permitted within Major Floodplain as outlined in the Floodplain Overlay District (FOD). Staff does not support amending the FOD to allow stormwater management facilities to be located within the Major Floodplain due to the potential for structural instability, increased flooding, and the concentration of pollutants within the river and stream corridor.	
e)	Ensure that adoption of the requirements will not negatively impact the County’s current and future economic development opportunities and expansion of the County’s commercial tax base. Stakeholders with experience applying the Act throughout the Commonwealth should be represented	Staff has evaluated these topics through the development of the amendments and the stakeholder review and several of these topics are specifically addressed within this response matrix. Staff notes that the regulations have been successfully applied in the 84 Tidewater localities since the early 1990s and that local ordinances from surrounding jurisdictions were consulted in drafting the proposed amendments. Furthermore, several of the stakeholders	

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	and the following topics should be addressed: the RPA delineation process, locational clearance submission requirements and process, the scope and application of the Water Quality Impact Assessment, Board of Supervisors review of exceptions concurrent with legislative applications, flexibility in adopting the regulations since adoption is voluntary, and the applicability of including connected wetlands into the RPA given the Board's direction.	that are actively participating in the process have had extensive experience implementing the regulations in other jurisdictions and have provided specific comments in regard to these items, many of which have been integrated into the draft policies and regulations.	
f)	Consider the designation of the Route 28 Tax District as an Intensely Developed Area (IDA) to minimize the impact of the regulations by allowing administrative reductions in the buffer.	<p>The CBPA regulations (9VAC10-20-100) allow local governments to designate IDAs, which are areas of existing development and infill sites where little of the natural environment remains and redevelopment is planned. These are areas where development has severely altered the natural state of the area such that at least one of the following conditions exist at the time of adoption: 1) there is more than 50 percent impervious surface; 2) public sewer and water systems or a constructed stormwater drainage, or both have been constructed (not planned) as of the local adoption date; and 3) housing density is equal to or greater than four dwelling units per acre. Significant areas of natural environment remain within the Route 28 Tax District, which is only 31 percent impervious based upon current Geographic Information System data. Approximately 8 percent of parcels within the Route 28 Tax District contain RPA, which is lower than the percent of parcels countywide (which is approximately 10 percent). Furthermore, 58 percent of the RPA within the Route 28 Tax District falls within the Major Floodplain, where development is already limited.</p> <p>The stormwater system management performance criterion that would apply in IDAs would, in some cases, be more stringent than the requirement that would apply absent the IDA designation. On vacant or minimally-developed parcels in IDAs the requirement may be difficult, if not impossible, to achieve. Additionally, there are opportunities for case-by-case consideration of encroachments into the RPA through the exception review process. In 2003 Fairfax County considered the application of IDAs in their Chesapeake Bay Preservation Ordinance for the Tyson's Corner Urban Center and other portions of the County, including highly developed portions of the Route 28 corridor, based largely on a request by the WEST*GROUP, the developer of Tyson's. Following a study of the ramifications of an IDA designation, the WEST*GROUP withdrew. Fairfax County does not currently have any IDAs and none are being sought. Current densities in the Fairfax portion of the Route 28 Tax District are approximately 0.50 FAR while the Loudoun portion averages approximately 0.24 FAR for developed parcels.</p>	
g)	The adopted RPA map should be used for land use applications without the need to perform a site-specific delineation. Many land use applications will not impact	The enabling regulations (9VAC10-20-80.D) require that a site-specific determination of perennality be made or confirmed by the local government as part of the plan of development review process (9VAC10-20-105). As currently drafted, the amendments	

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	RPAs, but will have to perform delineations.	allow the Administrator to waive the RPA delineation provided that there are no streams or water bodies within the limits of disturbance, nor within 300 feet of the limits of disturbance.	
h)	Storm sewer outfalls and stream and wetland restoration projects should be included as Exempt Uses.	Storm sewer outfalls and stream restoration projects are not designated as exempt uses in the enabling regulations. These uses are designated as water-dependent facilities in Section 1222.05 of the CBPO and are permitted in the RPA following review and approval of a Water Quality Impact Assessment.	
i)	Essential private utilities including septic and water line connections required to make a lot buildable should be designated as exempt uses subject to the criteria in Section 1222.11 requiring minimal disturbance.	Installation of water wells is exempt within the RPA. Septic systems and septic lines are not designated as exempt or permitted uses within the RPA in the enabling regulations. The Chesapeake Bay Local Assistance Division has provided guidance on this topic indicating that new lots should be platted to avoid the remote placement of drainfields that require impact to the RPA. Section 1222.19 outlines provisions for an administrative waiver that permits disturbance to the RPA to accommodate a reasonable buildable area for a principle structure and necessary utilities for existing lots of record where this situation may occur on existing lots of record.	
j)	The draft amendments should maintain consistency with federal and state regulations. The RPA buffer should be measured from the Ordinary High Water Mark (OHWM) which is required to be delineated in conjunction with wetland delineations and the planting requirements should be consistent with mitigation planting requirements.	The draft amendments have been revised so that the buffer is measured from the OHWM (and connected wetlands) as opposed to the channel scarline. Staff conferred with staff from Wetland Studies and Solutions regarding mitigation planting requirements and amended the planting requirements in Chapter 7 of the Facilities Standards Manual to avoid potential conflicts with mitigation planting requirements.	
k)	Landscape Architects and other registered professionals should be allowed to submit required plans and surveys currently designated under the purview of Certified Arborists and Professional Foresters. Arborist and foresters cannot be held professionally responsible for their work as they are not certified.	Planting Plans are required to be prepared under the direction of and signed by a certified arborist or professional forester who has at least a Bachelor of Science degree from an accredited School of Forestry due to the scope of work required to be performed. Professional Foresters are considered the most qualified individuals to prepare the required plans. Certified Arborists obtain certification through an exam administered by the International Society of Arboriculture (ISA) and have to maintain certification through continuing education and are also considered qualified to prepare the required plans. Professionals such as those specified who have acquired the skills necessary to prepare the required plans have the option to become Certified Arborists in order to submit the required plans.	
l)	Consider requiring that lots less than 20,000 square feet be platted outside the RPA, as opposed to requiring 40,000 square feet to be platted outside the RPA, for new residential lots.	The goal of this provision is to ensure that enough useable lot area remains on the property exclusive of the RPA to facilitate the use of the lot. Prince William County requires a minimum of 20,000 square feet outside the RPA on residential lots. There may be an acceptable interim provision whereby lots served by public water and sewer may have sufficient area if 20,000 square feet is provided exclusive of the RPA, while lots on well and septic will require more area (e.g., the current standard of 40,000 sf) exclusive of the RPA. Staff seeks input from the Planning Commission regarding the desired approach.	

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m)	Provide for the Board of Supervisors to be the Exception Review Committee for exceptions processed concurrent with legislative applications to reduce costs and delays to business (similar to Fairfax County).	The enabling regulations (9VAC10-20-150.C.2.a) allow exceptions to be considered and acted upon by the local legislative body; the local planning commission; or a special committee, board or commission established or designated by the local government. The draft amendments create a Chesapeake Bay Review Board with expertise pertinent to agriculture, land development, and the environment that will review exceptions either prior to, concurrent with, or following review of legislative applications (similar to Prince William County). The current approach permits the review board to provide comprehensive, consistent review of all exception applications. Staff seeks additional direction from the Planning Commission regarding the desired approach.	
n)	Allow the Board of Supervisors to hear appeals.	Section 10.1-2109.F of the Chesapeake Bay Preservation Act permits localities to establish a 30-day appeal to the circuit court for any person aggrieved by a decision of a board established by the locality to hear cases regarding ordinances adopted pursuant to the Act. Section 1222.24 of the CBPO has been structured consistent with this enabling authority. Members of the Chesapeake Bay Review Board are appointed by the Board of Supervisors.	
o)	The definition of “effective vegetation” should be the same as “permanent vegetative cover” (i.e., 90% coverage of turfgrass to a minimum of two inches high) to allow turfgrass in the RPA.	Section 1222.14 of the CBPO requires that vegetation that is “effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution” shall be retained if present and established where it does not exist consistent with the requirements of the enabling regulations (9VAC10-20-130.3). The term “permanent vegetative cover” is not included in the draft amendments. It is an informal standard used by Soil and Water Conservation District staff to evaluate if the buffer area is being effectively managed to prevent concentrated flows of surface water from breaching the buffer area consistent with the enabling regulations (9VAC10-20-130.5.b). It is used primarily to evaluate livestock operations to determine if the functions of the buffer are maintained in conjunction with permitted grazing within the buffer. There are no provisions in the enabling regulations that permit the establishment of new turf and/or lawns within the Buffer Area.	
p)	Consider removing the requirement to physically mark the RPA boundary on the site due to the fact that the limits of clearing and grading are already required to be identified.	The referenced requirement has been removed from Section 1222.17 of the CBPO.	
q)	Provide grandfathering provisions to guide staff on what applications are exempt if diligently pursued to an approval. Otherwise, property owners must hire attorneys to assert their vested rights and seek confirmation from the County Attorney or circuit court to complete their projects.	The draft ordinance clarifies that the vested rights of any landowner under existing law will not be affected. Staff has obtained copies of grandfathering policies from Fairfax County and Prince William County and is working with the County Attorney’s office to formulate a recommendation for the Board’s consideration during the public hearing process.	
r)	The proposed amendments create uncertainty as to how much and what land is affected. The economic effects are significant and have not been fully analyzed and understood, especially in the Rural Policy Area.	Staff has performed detailed analyses on the extent of the RPA as outlined in the draft Chesapeake Bay Preservation Area Map. It is estimated that less than 8 percent of the land in the County, including an estimated 7.5 percent of the land in AR-1 and AR-2, contains RPA. Approximately 40 percent of the RPA falls within the Major Floodplain, where development is already limited. The agricultural stakeholders and staff liaisons are working	

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		to prepare an Agricultural Fiscal Impact Analysis based on Commissioner Robinson's request at the December 3, 2009 Stakeholder Roundtable to further clarify economic effects of the proposed amendments.	
s)	Properties within the RPA will be regulated which may affect the way structures are placed and land is used. Therefore, affected property owners should be given enhanced notification of these changes, an easy-to-understand guide on how the regulations will impact land use, and an opportunity to weigh in prior to the public hearing.	Staff hosted a Chesapeake Bay Preservation Act HOA Outreach Session on January 13, 2010, prior to the public hearing, to address how individual properties could be affected by the draft amendments. Related information is also available via the Chesapeake Bay Webpage (www.loudoun.gov/chesapeakebay), and a Chesapeake Bay Hotline and a Chesapeake Bay e-mail address have been established.	
t)	What degree of flexibility is available to the County in adopting a Chesapeake Bay Preservation Act program?	The County has the flexibility to determine the extent of RPA, the extent of Resource Management Area (RMA), and which of the 11 performance criteria to pursue. The Board of Supervisors provided direction on these key decisions in conjunction with the Work Program approved on April 7, 2009. There are some other areas of flexibility that have been identified within this matrix in response to individual comments.	
u)	Property owners within the Route 28 Tax District should be fully informed of the proposed amendments due to the perception that the District is "protected from change" and will not be affected by the proposed amendments.	Staff will provide updates to the Route 28 Tax District property owners throughout the regulatory process via e-mail updates associated with the Route 28 CPAM. Related information is also available via the Chesapeake Bay Webpage (www.loudoun.gov/chesapeakebay), and a Chesapeake Bay Hotline and a Chesapeake Bay e-mail address have been established.	
v)	Provide stakeholders with copies of the revised drafts once they are available, prior to the Planning Commission Public Hearing.	An e-mail with the link to the revised drafts on the Chesapeake Bay Webpage (www.loudoun.gov/chesapeakebay) was e-mailed to the stakeholders and the Planning Commission on January 6, 2010.	
3	ENVIRONMENTAL (Gem Bingol, Bruce McGranahan, Mike Rolband, Ed Gorski)		
a)	Reduce the drainage area maximum from 50 acres to 35 acres for a modified perennial flow determination in FSM 7.500.A.1.b.	Staff supports the proposed recommendation and proposes to make this amendment prior to Planning Commission approval of the proposed amendments.	
b)	The interactive draft CBPA map should be provided before or by the time the Planning Commission Public Hearing drafts are published.	The interactive draft CBPA layer was posted to WebLogis in conjunction with the advertisement of the Planning Commission Public Hearing drafts.	
c)	Increasing the level of flexibility in the proposed amendments introduces the potential for legal challenges. It is more defensible to adhere to the enabling regulations.	Staff agrees with the need to maintain consistency with the state enabling regulations of the Chesapeake Bay Preservation Act in drafting the proposed amendments consistent with the Intent to Amend approved by the Board of Supervisors on December 15, 2009.	
d)	Stream buffer ordinances have been instituted nationally with success and the Chesapeake Bay Preservation Act has been applied locally and regionally while allowing development and agriculture to continue.	Staff agrees with this observation and recognizes the benefits of implementing an established program.	

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e)	Education to business, agriculture, and property owners is important for the successful implementation of a local Chesapeake Bay Preservation Act program. The County should develop educational materials so that all Loudoun County residents understand how they are affected and what is and what is not permitted under the new regulations.	Staff acknowledges the need for education and outreach regarding the amendments. To that end, a Chesapeake Bay Webpage (www.loudoun.gov/chesapeakebay), a Chesapeake Bay Hotline, and a Chesapeake Bay E-Mail Address have been established. Staff envisions that additional educational materials will be made available through the website as the effort continues.	
f)	Adequate staff support is essential to assisting farmers, businesses, and property owners in complying with the regulations. Promulgating regulations without adequate staff would be a disservice and lead to failed implementation.	Staff agrees that adequate staff support is necessary for the implementation of the draft amendments. Staff envisions that the draft amendments can be implemented if existing staffing levels are maintained in key areas.	
g)	Clarification is needed regarding the provisions that are mandatory under the Chesapeake Bay Preservation Act and the areas within the proposed amendments that are flexible.	The County has the flexibility to determine the extent of RPA, the extent of Resource Management Area, and which of the 11 performance criteria to pursue. The Board of Supervisors provided direction on these key decisions in conjunction with the Work Program approved on April 7, 2009. There are some other areas of flexibility that have been identified within this matrix in response to individual comments.	
h)	Define the edge of a perennial stream and water body as the OHWM, as opposed to the channel scarline consistent with federal and state wetland regulations.	The draft amendments have been revised so that the edge of the perennial stream and water body is defined as the OHWM, as opposed to the channel scarline.	
i)	Include outfall structures of storm drains and sewers and stream bank stabilization measures as exempt uses. Alternatively, clarify that stream stabilization, stream restoration, wetlands creation, wetlands restoration, and wetlands enhancement are water dependent uses permitted in the RPA.	Storm sewer outfalls and stream restoration projects are not designated as exempt uses in the enabling regulations. These uses are designated as water-dependent facilities in Section 1222.05 of the CBPO, consistent with the enabling regulations, and are permitted in the RPA following review and approval of a Water Quality Impact Assessment. Staff clarified the classification of stream and wetland mitigation projects as water dependent facilities as requested.	
j)	Amend Section 1222.11.a of the CBPO to exempt “pedestrian trails up to 8 feet in width and appurtenant structures, such as bridges, shoulders, slopes, and walls.”	“Passive recreation without constructed facilities (except for pedestrian trails),” are exempt in Section 1222.11; thus, pedestrian trails may include constructed facilities such as bridges.	
k)	Amend Section 1222.11.d to exempt private roads and driveways.	Private roads and driveways are not exempt in the enabling legislation. They are designated as permitted uses in the RPA in Section 1222.12.c, consistent with the enabling legislation.	
l)	Amend Section 1222.11 to add “storm drains and sewers and their outfall structures,” to change “water lines” to “water lines including connections to wells,” to change “sanitary sewer lines including pump stations” to “sanitary sewer lines including pump stations, sewer laterals, and lines connecting to septic fields.”	Storm sewer outfalls are classified as water dependent facilities, which are permitted in the RPA per Section 1222.12, consistent with the enabling legislation. Installation of water wells is exempt within the RPA per Section 1222.11.a, consistent with the enabling legislation. Septic systems and septic lines are not designated as exempt or permitted uses within the RPA in the enabling regulations. The Chesapeake Bay Local Assistance Division has provided guidance on this topic indicating that new lots should be platted to avoid the remote placement of drainfields that require impact to the RPA. Section 1222.19 outlines provisions for an administrative waiver that permits disturbance to the RPA to accommodate a reasonable buildable area for a principle structure and necessary utilities for existing lots of	

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		record where this situation may occur on existing lots of record.	
m)	Add new section 1222.11.f allowing the construction, monitoring, and maintenance of stream stabilization, stream restoration, stream enhancement, wetlands creation, wetlands restoration, or wetlands enhancement if conducted in accordance with erosion and sediment control requirements.	These projects are not designated as exempt uses in the enabling regulations. These uses are designated as water-dependent facilities in Section 1222.05 of the CBPO, consistent with the enabling regulations, and are permitted in the RPA following review and approval of a Water Quality Impact Assessment.	
n)	Correct the reference to the erosion and sediment control requirements in Section 1222.11.	Section 1222.11.a.i and Section 1222.11.e.iv should be amended to reference Section 1222.17.iii.	
o)	To encourage redevelopment, amend Section 1222.05.p. and 1222.12.b where it reads “no further encroachment into the RPA” to read “no significant encroachment in the RPA.”	The language provided in the referenced sections is consistent with the language specified in the enabling regulations and has not been revised as suggested.	
p)	Correct a typo in Section 1222.07.d to change “RPA” to “RPA and RMA,” to clarify that both the RPA and RMA will be included in density calculations.	Section 1222.07 has been amended as suggested.	
q)	Remove the last two sentences of Section 1222.09 and amend FSM 7.501.A.1.a to clarify that the RPA must be delineated as required by Section 1222.08 on existing lots of record.	Section 1222.09 and FSM 7.501.A.1.a have been amended as suggested and corresponding edits have been provided within the referenced sections, Section 1222.17.a.iii, and Chapter 1220 of the Codified Ordinances.	
r)	In order to clarify that the pollutant removal rates attributed to the buffer apply only to water sheet flowing across forested buffer areas, replace “Vegetation” in Section 1222.14.a with “A vegetative community comprised of native herbaceous, shrubs, and trees” and add the phrase “from land areas that sheet flow into it” to Section 1222.14.c.	The referenced sections as currently worded are consistent with the requirements of the enabling regulations (9VAC10-20-130.3). FSM 7.304 has been updated and outlines the requirement to plant native herbaceous vegetation, shrubs, and trees, where applicable.	
s)	Limitations should be placed on the use of fertilizers and manure in buffer areas (except for the initial establishment of vegetation) to achieve the stated pollutant removal rates.	The suggested amendment is outside the scope of the enabling regulations. However, the Loudoun County Extension Office currently coordinates a voluntary program implemented by Master Gardener Volunteers that educates homeowners and assists them in implementing nutrient management plans. Members of the “Turf Team” visit the property, collect a soil sample, and assess the condition of the lawn. Extension staff develops a written nutrient management plan based upon the soil test results and fertilizers available locally. The nutrient management plan is valid for 3-4 years, at which time the soil should be re-tested. This program is currently being considered for expansion into the proposed Limestone Overlay District due to the potential for groundwater contamination.	
t)	Amend the requirement for plans prepared by an “ISA Certified Arborist or Professional Forester with a Bachelor of Science degree from an accredited School of Forestry” in Sections 1222.14.d.i & ii, Section 1222.14.e.i, 1222.23.b.vii.,	Planting Plans are required to be prepared under the direction of and signed by a certified arborist or professional forester who has at least a Bachelor of Science degree from an accredited School of Forestry due to the scope of work required to be performed. Professional Foresters are considered the most qualified individuals to prepare the required	

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	FSM 7.304, FSM 7.501.A.2.b, and FSM 8.305.E.1.j to read “ISA Certified Arborist, L.A., L.S., P.E., P.W.D., or P.W.S.”	plans. Certified Arborists obtain certification through an exam administered by the International Society of Arboriculture (ISA) and have to maintain certification through continuing education and are also considered qualified to prepare the required plans. Professionals such as those specified who have acquired the skills necessary to prepare the required plans have the option to become Certified Arborists in order to submit the required plans.	
u)	Consider removing the requirement to physically mark the RPA boundary on the site from 1222.17.b.i.a due to the fact that the limits of clearing and grading are already required to be identified and the fact that the limits of grading may intersect the RPA boundary for permitted uses.	The referenced requirement has been removed from Section 1222.17.b.i.a of the CBPO.	
v)	Delete Section 1222.19.iii to eliminate the need for a Water Quality Impact Assessment (WQIA).	The WQIA is required by the enabling legislation for disturbances to the RPA (9VAC10-20-130.6).	
w)	<p>Change Section 1222.19.iv to 1222.19.iii and add two new subsections to eliminate staff subjectivity as to what is a reasonable level of impact similar to Fairfax County:</p> <p>iv. The proposed development shall not exceed 10,000 square feet of land disturbance in the RPA buffer, exclusive of land disturbance necessary for the installation of a soil absorption field associated with an individual sewage disposal facility and land disturbance necessary to provide access to the lot or parcel and principal structure; and</p> <p>v. The proposed development shall not create more than 5,000 square feet of impervious surface within the RPA buffer, exclusive of impervious surface necessary to provide access to the lot or parcel and principal structure.</p>	The current text does not establish a limit of disturbance due to the site-specific nature of each request. The individual constraints of each lot or parcel, including other applicable environmental ordinances, will need to be considered in evaluating waiver requests for loss of a buildable area. As noted in the comment, there is flexibility to establish a threshold to further define the permitted amount of disturbance whereby a project would be eligible for an administrative waiver. However, all disturbances above that threshold would have to be processed as formal exceptions.	
x)	Delete Section 1222.20.a.i.b to eliminate the need for a WQIA.	The WQIA is required by the enabling legislation for disturbances to the RPA (9VAC10-20-130.6).	
y)	Delete Section 1222.20.a.i.c prohibiting principal structures from expanding into the seaward 50 feet of the buffer area.	While this criteria is not specifically outlined the enabling legislation, the “Nonconforming Structures and Uses” guidance issued by the Virginia Department of Conservation and Recreation (DCR), the agency responsible for advising localities on the regulations, indicates that “Encroachments into the seaward 50-feet of the buffer are discouraged.” Staff supports this approach. Therefore, additions that propose encroachments into the seaward 50-feet would be processed as formal exceptions subject to public comment and review by the appointed Chesapeake Bay Review Board.	

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z)	Delete Section 1222.20.c prohibiting detached accessory structures from being located in the RPA.	The enabling regulations permit localities to allow the expansion of existing structures within the RPA by establishing administrative review procedures (9VAC10-20-150). The “Nonconforming Structures and Uses” guidance issued by DCR clarifies that the administrative review applies only to expansion of nonconforming principal structures; construction and expansion of detached accessory structures are required to be reviewed as formal exceptions.	
aa)	Fairfax County permits sheds less than 150 square feet to be constructed on existing lawns in the RPA.	Sheds are not listed as exempt or a permitted uses in the RPA in the Fairfax County Chesapeake Bay Ordinance. A brochure entitled “Understanding the Chesapeake Bay Preservation Ordinance Amendments, Important information for Fairfax County homeowners” published in June 2005 states that: “The administrative waiver for minor additions is not available for construction of detached accessory structures such as sheds. Accessory structures are specifically prohibited in the state regulations from consideration as minor additions. However, the construction of small sheds that do not require a building permit (the current limit under the Virginia Uniform Statewide Building Code is 150 sq.ft. of building area) constructed over existing maintained grass lawns can be considered to be an inconsequential modification to an existing use and may be permitted. As a general rule, sheds should only be located in RPAs when there are no reasonable alternatives for locating the shed outside of the RPA.” Notably, the brochure clarifies that the state regulations prohibit the construction of sheds in the RPA. Furthermore, Fairfax County does not have a mechanism to review projects that do not require a Building Permit (e.g., projects less than 150 square feet); therefore, sheds are often constructed without local review. By contrast, Loudoun County requires a Zoning Permit for all proposed projects, which is reviewed for consistency with all locally adopted ordinances.	
bb)	<p>Provide for the Board of Supervisors to be the Exception Review Committee for exceptions processed concurrent with legislative applications to reduce costs and delays to reduce staff costs and landowner costs and time. Section 118-6-1 of the Fairfax County Chesapeake Bay Preservation Ordinance states:</p> <p>Exceptions to the criteria and requirements of this Chapter to permit encroachment into the RPA that do not qualify for administrative review under Article 5 may be granted by the Exception Review committee or by the Board of supervisors in conjunction with a rezoning or special exception approval as set forth in this Article with appropriate conditions necessary to preserve the purposes and intent of this Chapter.</p>	The enabling regulations (9VAC10-20-150.C.2.a) allow exceptions to be considered and acted upon by the local legislative body; the local planning commission; or a special committee, board or commission established or designated by the local government. The draft amendments create a Chesapeake Bay Review Board with expertise pertinent to agriculture, land development, and the environment that will review exceptions either prior to, concurrent with, or following review of legislative applications (similar to Prince William County). The current approach permits the review board to provide comprehensive, consistent review of all exception applications. Staff seeks additional direction from the Planning Commission regarding the desired approach.	
cc)	Allow appeals of administrative decisions to be processed by	Section 10.1-2109.F of the Chesapeake Bay Preservation Act permits localities to establish a	

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	the Board of Supervisors, as opposed to the Chesapeake Bay Review Board. Allow appeals of Chesapeake Bay Review Board decisions to be processed by the Board of Supervisors, as opposed to the circuit court. Fairfax County's Chesapeake Bay Preservation Ordinance (Article 8) is structured in this manner. This brings decision making to the officials, who are accountable to the public, and reduces time and court costs.	30-day appeal to the circuit court for any person aggrieved by a decision of a board established by the locality to hear cases regarding ordinances adopted pursuant to the Act. Section 1222.24 of the CBPO has been structured consistent with this enabling authority. The ordinance has been structured to allow administrative decisions to be appealed to the Chesapeake Bay Review Board due to the fact that they have expertise pertinent to agriculture, land development, and the environment, and that they are the entity responsible for reviewing exceptions. Members of the Chesapeake Bay Review Board are appointed by the Board of Supervisors.	
dd)	Amend "uniform" to read "random" in FSM 7.304.B to facilitate a more natural appearance as a result of planting.	Staff met with staff from Wetland Studies and Solutions, Inc. to discuss the planting recommendations provided by the Wetland Workgroup. FSM 7.304.B was modified from "uniform" to read "generally uniform." This provision is intended to avoid clustering of plantings in one area.	
ee)	Modify Table 2 ("Required Plant Densities for Buffer Areas") in FSM 7.304.B to delete the plant spacing column, to select a plant density, as opposed to providing a density range, and to add shrub plantings.	Staff met with staff from Wetland Studies and Solutions, Inc. to discuss the planting recommendations provided by the Wetland Workgroup. Table 2 has been amended as follows: the plant spacing column has been modified, a plant density has been selected for each plant type, and shrub plantings have been added.	
ff)	Modify FSM 7.304.C.2 to allow herbicides to be used across the entire restoration area, coupled with disking to avoid competition from non-native grasses.	Staff met with staff from Wetland Studies and Solutions, Inc. to discuss the planting recommendations provided by the Wetland Workgroup. Staff amended the text in 7.304.C.2 to clarify that "competing perennial vegetation shall be eliminated mechanically and/or with herbicides in 3-to 4-foot-wide circles or strips where trees will be planted" and to add the following text: "Broader application of herbicides may be utilized when establishing mitigation projects, on a case by cases basis."	
gg)	Modify FSM 7.304.D to incorporate the cover crop noted in 7.304.C.1 and to allow more diverse seeding mixtures than those listed in Table 7 consistent with mitigation projects and to remove several non-native species. Amend FSM 7.304.F.2 to allow tubes not to be used by the applicant if planting densities of seedlings/tublings are increased by 100 percent and to clarify that tubes are not required on 3-gallon plants.	Staff met with staff from Wetland Studies and Solutions, Inc. (WSSI) to discuss the planting recommendations provided by the Wetland Workgroup. Table 7 has been amended based upon the plant specifications provided by WSSI to include the cover crop and to remove non-native species. Tubes are not required in FSM 7.304.F.2; they are included as one option for preventing or reducing wildlife damage. Applicants still have the option of proposing the suggested method in planting plans submitted for review.	
hh)	Grandfathering is a critical element of the proposed amendments. Staff should consider Fairfax County's grandfathering policy, which has been the easiest to implement for staff and landowners. The proposed grandfathering policy should be the subject of a stakeholders meeting.	The draft ordinance clarifies that the vested rights of any landowner under existing law will not be affected. Staff has obtained copies of grandfathering policies from Fairfax County and Prince William County and is working with the County Attorney's office to formulate a recommendation for the Board's consideration during the public hearing process.	
ii)	Incorporate lawn fertilizer restrictions into the ordinance to reduce nutrient pollution and improve water quality.	The suggested amendment is outside the scope of the enabling regulations. However, the Loudoun County Extension Office currently coordinates a voluntary program implemented	

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		by Master Gardener Volunteers that educates homeowners and assists them in implementing nutrient management plans. Members of the “Turf Team” visit the property, collect a soil sample, and assess the condition of the lawn. Extension staff develops a written nutrient management plan based upon the soil test results and fertilizers available locally. The nutrient management plan is valid for 3-4 years, at which time the soil should be re-tested. This program is currently being considered for expansion into the proposed Limestone Overlay District due to the potential for groundwater contamination.	
jj)	Delete the second and third sentences of Policy 5 in Chapter 4, Section B of the 2001 Countywide Transportation Plan (“Natural stream channels will be maintained beneath road crossings to minimize impacts to stream flows and habitat. Unavoidable filling of jurisdictional waters and wetlands will be mitigated according to the following priorities: 1) adjacent to the road crossing; 2) within the same stream watershed and Policy Area; 3) within the same stream watershed within Loudoun County; or 4) elsewhere within Loudoun County.”) The policy is considered to be an impediment to local progress in attracting mitigation projects. The change is proposed for the following reasons: 1) It is often not practicable to maintain natural streams beneath road crossings due to cost, logistics, scour, and the fact that natural streams rely upon stream-side vegetation for stability; 2) the locational preferences for mitigation are out of date and contradict with federal regulations and state guidance that establish the order of mitigation preferences as i) Mitigation Bank Credits, ii) in-lieu fee contributions, iii) permittee responsible mitigation on-site, and iv) permittee responsible mitigation off-site; 3) Virginia Code Section 62.1-4415.20.E states “No locality may impose wetland permit requirements duplicating State or Federal Wetlands Permit requirements.”	Staff disagrees that the proposed policy would be an impediment to attracting local mitigation projects in that similar proffer commitments have been negotiated over the past several years and the County has continued to experience significant growth in the number of local mitigation bank projects. Furthermore, although the policy was initially included to be consistent with the draft Countywide Transportation Plan, it has been removed from the draft Chesapeake Bay Comprehensive Plan Amendment due to the fact that it is not directly connected to the implementation of the proposed regulations. Additionally, the U.S. Army Corps of Engineers and the Virginia Department of Environmental Quality are responsible for issuing wetland permits. The County does not have and is not proposing local wetland permitting requirements.	
kk)	Delete “proximate to the impacted resource” in Policy 14 in Chapter 5, Section A of the Revised General Plan due to the fact that the stated locational preference for mitigation on site is out of date and contradicts with federal regulations and state guidance that establish the order of mitigation preferences as noted above.	Policy 14 has been amended as suggested.	
ll)	The principal flexibility inherent to the process (e.g.,	Staff agrees with the noted observations.	

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	selecting the RPA, the RMA, and the performance criteria) has already been addressed in the Board direction. Once the criteria have been selected, the provisions associated with the selected criteria must be implemented. Virginia localities have 20-plus years of experience implementing the enabling regulations and withstanding legal challenges. Any proposed deviations could result in costly court challenges.		
mm)	Only 22 percent of streams in Loudoun County achieve good or excellent ratings according to current water quality standards. Declining water quality will negatively affect property values. The proposed amendments will help to preserve property values.	<p>The 2009 Loudoun County Stream Assessment study included both benthic and stream habitat field investigations at 500 locations throughout the County. Statistically the benthic study performed at 177 of these locations indicated that 3.8% of the stream miles are in “Excellent” condition and that 18% are in “Good” condition. The remaining 78% of the stream segments do not meet the Virginia Dept of Environmental Quality (DEQ) Aquatic Life Use water quality criteria based on benthic macroinvertebrate monitoring. The Aquatic Life Use is one of six water quality standards that DEQ uses to classify stream segments as “impaired.” DEQ adds stream segments that do not meet one or more of the water quality standards to the EPA 303(d)/305(b) listing as required by the Clean Water Act. As of the 2008 DEQ biennial list for Aquatic Life Use, there were 44.6 stream miles (6.1%) with benthic impairments, however, DEQ had not assessed or had insufficient monitoring information on 75% of the stream miles in Loudoun County. Further details may be found at www.loudoun.gov/streamassessment.</p> <p>It is generally accepted that water quality is one component of quality of life issues; therefore a decline in water quality could negatively affect property values.</p>	
4	PLANNING COMMISSION CONCERNS		
a)	Directed to Bill Baker - Is there a concern that what is being proposed for the Chesapeake Bay TMDL Implementation Plan will be incompatible with the proposed regulations? (Austin)	Mr. Baker responded that was not a concern, but that there may be a need to redraft the proposed policies based upon direction from the Environmental Protection Agency to the State of Virginia. Staff clarified that the deadline for completing the TMDL is not until December 2010. Staff supports proceeding with the proposed regulations, which implement several of the County’s local watershed management strategies, and addressing the need for any needed amendments if and when this information becomes available.	
b)	Directed to Al Van Huyck – Can the Agricultural District Advisory Committee (ADAC) help coordinate the land management plan for participation in an Agricultural and Forestal District with the agricultural requirements of the proposed amendments? (Maio)	Staff welcomes the support of ADAC in collaborating on the implementation of the proposed regulations.	
c)	Is there a requirement to fence livestock out of streams or does this occur under certain circumstances? (Maio)	Fencing and/or other grazing Best Management Practices are only required if adequate vegetation cannot be maintained within the RPA Buffer Area. If fencing is required, the fence must be placed 25-feet from the stream.	

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d)	Is it accurate that the fencing would only apply to perennial water bodies? (Austin)	Fencing would only apply adjacent to perennial water bodies.	
e)	What would be considered sufficient staffing resources to implement the proposed regulations? (Chaloux)	Maintaining existing staffing levels in key areas is necessary to support implementation of the proposed regulations.	
f)	How much flexibility do we have with respect to the proposed ordinance? (Austin)	The County has the flexibility to adopt provisions of the Chesapeake Bay Act and the attendant regulations, but once a provision is selected, it must be adopted in its entirety, to be consistent with the regulations. Joan Salvati, Director of the Chesapeake Bay Local Assistance Division, discussed this issue during her presentation at the December 1, 2008 Board of Supervisors Committee of the Whole Meeting. For example, the County has the flexibility to determine the extent of RPA, the extent of Resource Management Area, and which of the 11 performance criteria to pursue. The Board of Supervisors provided direction on these key decisions in conjunction with the Work Program approved on April 7, 2009. There are some other areas of flexibility that have been identified within this matrix in response to individual comments.	
g)	Would the Dulles Area Association of Realtors (DAAR) welcome staff to discuss the details of the proposed ordinance and how it might affect individual properties? (Maio)	DAAR would welcome staff to attend organizational meetings. Staff invited all stakeholders to extend the invitation to their members to attend the January 13, 2010 HOA Outreach Session where staff provided an overview of the proposed amendments and discussed how they could affect HOAs and residential property owners.	
h)	Can the Route 28 stakeholder group be provided the details of the proposed ordinance and how it might affect them? (Maio)	Staff will provide updates regarding the draft Chesapeake Bay amendments to the Route 28 Tax District property owners via e-mail updates associated with the Route 28 Comprehensive Plan Amendment. In addition, it is anticipated that stakeholders such as the National Association of Industrial and Office Properties and the Economic Development Commission will keep their members informed.	
i)	What percentage of land area in the Route 28 Tax District is located within the RPA, as compared to the average 8 percent of land located within the RPA countywide? (Austin)	Approximately 7 percent of the land within the Route 28 Tax District falls within the RPA. Staff also assessed the percent of parcels containing RPA and found that approximately 8 percent of parcels within the Route 28 Tax District contain RPA, which is lower than the percent of parcels countywide (which is approximately 10 percent).	
j)	It is a reasonable request to try to identify property owners who may be affected by the proposed regulations prior to the public hearing? Do homeowners need to be proactive? (Bayless)	The interactive map (www.loudoun.gov/weblogis) made available on January 6, 2010 allows homeowners to identify how they may be affected. The County hosted an HOA Outreach Session on January 13, 2010 to provide an overview of the proposed amendments and discussed how they could affect HOAs and residential property owners, including a demonstration of how to use the interactive map. An invitation was sent to each of the County HOAs using the HOA contact list maintained by the Public Information Office. The stakeholders were also notified and encouraged to extend the invitation to their members. Staff also provided a similar overview at the November 10, 2009 Sugarland Run District Homeowner's Association Forum hosted by Supervisor Buckley.	
k)	There is confusion about the level of flexibility? Can staff clarify where there is flexibility within the drafts?	Staff has identified areas where there is flexibility in response to individual comments presented within this matrix.	

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	(Ruedisueli)		
l)	Can the state enabling legislation associated with the Chesapeake Bay Preservation Act be amended to facilitate an alternative approach? Did the Board consider alternative approaches? (Syska)	The General Assembly could amend the state legislation; however, staff is unaware of any proposed amendments related to the issues identified in this matrix. The Board of Supervisors considered several water quality protection options, including the reinstatement of the River and Stream Corridor Overlay District (RSCOD), a customized stream buffer ordinance, maintaining the current environmental overlays, and various RPA options. After reviewing the various water quality protection options, the Board elected to authorize the Chesapeake Bay Preservation Act Work Program.	
m)	Which jurisdictions in Northern Virginia have adopted the Chesapeake Bay Preservation Act? (Chaloux)	Fairfax County, City of Fairfax, City of Falls Church, Prince William County, City of Alexandria, and Arlington County.	
n)	What would it cost to build a pool in the RPA? (Syska)	The costs are associated with the RPA delineation, the Water Quality Impact Assessment, and any fees associated with approval of the formal exception. Staff deferred to the stakeholders present at the meeting. Mike Rolband estimated that it may cost as much as \$3,000 to \$4,000 to process an exception request to locate a pool within the RPA. Staff is in the process of requesting specific information from local consultants related to the cost to perform the RPA delineation, the Water Quality Impact Assessment, and any other required plans. Staff notes that the Administrator may waive the RPA delineation where there are no streams or water bodies within the limits of disturbance, nor within 300 feet of the limits of disturbance.	
o)	Request to Mike Rolband and Joe Paciulli to identify where flexibility exists within the option the Board selected? Also, can stakeholders provide additional background on why they would prefer the Board of Supervisors to review exceptions, as opposed to the Chesapeake Bay Review Board appointed by the Board of Supervisors? (Maio)	Mike Rolband provided a letter to Commissioner Maio regarding these items on January 11, 2010, which was forwarded to the Commissioners. Both of these issues have been addressed elsewhere in the matrix and in the Staff Report.	
p)	Compare what Fairfax County and Prince William County have adopted to what is proposed. (Chaloux)	Staff consulted both the Fairfax County and Prince William County Chesapeake Bay Programs while preparing the draft regulations. Staff provided the Planning Commission with copies of these ordinances.	
q)	Provide a large format County Map identifying current stream conditions based upon the Countywide Stream Assessment for use during Planning Commission Work Sessions. (Chaloux)	Staff has prepared the draft maps depicting the requested information, which can be made available for reference during Work Sessions. A searchable map with the requested information is available online at: www.loudounwatershedwatch.org/maps/index.htm .	
r)	Request for a Fiscal Impact Analysis for agriculture to assess costs associated with implementation of the proposed regulations. (Robinson)	While a formal cost-benefit analysis is not included in the current scope of the project, the agricultural stakeholders and their staff liaisons are meeting on January 25, 2010 to examine the potential impacts and to develop an estimate of fiscal impacts to agriculture. Staff notes that agricultural activities are permitted within the RPA Buffer Area as outlined in the CBPO. The cost to conduct these activities is related to the cost of the BMP required to	

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		offset the reduced width of the buffer and varies according to the BMP selected and whether or not the BMP is already being implemented. As previously noted, local cost-share assistance is available to offset 75% of the installation cost of the applicable BMPs.	
s)	Request additional information from stakeholders regarding concerns related to cross-referencing ordinances, the FSM, etc. in the form of suggestions for writing cross-references or by identifying the sections that need to be updated. (Robinson)	These items are addressed in the referral from the FSM Committee, which will be provided in the Planning Commission Public Hearing packet. Ed Gorski indicated that many of the comments have already been addressed in the current drafts.	
t)	Request for a coordinated straw-horse from each group or the stakeholder group as a whole with ideas for publishing and disseminating data on how the regulations will affect homeowners, builders, and farmers, and who to call if they have questions. (Robinson)	No additional pertinent information has been received to date; however, staff anticipates that educational materials will be prepared to support implementation of the proposed regulations.	
u)	Enforcement and staffing are key themes. Request that the group provide a level of staffing that is optimum and one that is acceptable, and indicate why. (Robinson)	Staff anticipates that existing staffing levels would need to be maintained in key areas to support implementation of the proposed regulations. Staff will advise the Board during the upcoming FY 2011 budget deliberations to address how any proposed cuts to Staff levels in affected departments (including, but not limited to, Building and Development, Planning, and Extension Services), as well as the Soil and Water Conservation District, would impact the implementation and administration of the proposed regulations.	
v)	Obtain samples from other jurisdictions on what has been done for public education and outreach. (Chaloux)	Staff has consulted and compiled web pages, fact sheets, and brochures from other jurisdictions as sample public education and outreach efforts.	